

# W5YI REPORT

Up to the minute news from the worlds of amateur radio, personal computing and emerging electronics. While no guarantee is made, information is from sources we believe to be reliable. May be reproduced providing credit is given to The W5YI Report.

## Dits & Bits

Fred Maia, W5YI, Editor, P.O. Box 10101, Dallas, TX 75207

### ★ In This Issue ★

Broadcast Use of Amateur Radio  
Broadcasters Interpret the Rules  
Newscasters Install Ham Circuits  
Just what are the "New Rules?"  
Amateur License Revoked by FCC  
News Gathering on 434 MHz  
European Ham-in-Space Mission  
Application Form 610 Revised  
Order Issued on 30-Day Retesting  
...and on PRB-1 Declaration  
3895-kHz Ham Jammer Cited  
Japan Licensing American Hams  
and much, much more!



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October 15, 1985

## Broadcast Use of Amateur Radio - Mexico City

To what extent can amateur radio be used by broadcasters during an emergency? That is really the big amateur radio story to come out of Mexico City. Powerful tremors rocked the world's second most populated city on the morning of September 19th downing phone lines and knocking out long distance communications.

Quickly reacting to the disruption in commercial communications, the news media for the first time established logistical radio circuits right in the middle of the ham bands. They said the "new rules" allowed it. Radio and television news correspondents and anchors converged on Mexico City... their travel and support coordinated on amateur radio by broadcast hams.

Journalists, concerned with only one objective... reporting the news and getting their people and equipment in and out of Mexico City, were annoyed with other amateurs interfering with their transmissions. Broadcasters more or less took over the ham bands. Media people are very aggressive and do whatever it takes to report the news. As a mass, ham operators were completely confused!

Angry amateurs wanted to know "How can this legally happen?" ... "Doesn't the FCC forbid news gathering and transacting business on amateur radio." They heard of 'new rules'

from transmissions that they monitored but didn't know what they were. My phone rang off the hook... "What did I miss? Why doesn't the amateur radio community know about them... Why didn't you report them?" ... "You can use ham radio for reporting an emergency, but you can't use it to report on an emergency. When did that change? Just take a listen to twenty meters ...you won't believe it!" ...and on and on! Quite honestly it caught us by surprise, too.

While I did make a couple of phone calls before the last issue went to press, there wasn't time then to investigate the broadcast use of ham radio in detail. One thing became apparent. I wasn't the only one getting complaints. The FCC got them by the dozen.

### HISTORY: BROADCAST USE OF HAM RADIO

Nearly seven years ago the National Association of Broadcasters (NAB) filed a petition seeking to allow CBers and amateurs to transmit emergency and public safety information for broadcast and broadcast related purposes.

The Commission ruled (on March 15, 1979) that amateurs were prohibited from participating in these communications... no exceptions. CB, on the other hand, could be used for news gathering - although not for



broadcasting to the public - since "business" could legally be conducted there.

In 1982, Congress modified Section 605 of the Communications Act to eliminate the statutory prohibition on the unauthorized interception of amateur and CB radio transmissions. In a sentence, amateur communications were no longer to be considered private. Section 605 was redesignated Section 705 in 1984.

## THE GRENADA INVASION NEWS BLACKOUT

Many questions arose during the United States invasion of Grenada in October of 1983 concerning broadcast use of amateur radio. The media was prevented from covering the military action by a Department of Defense news blackout. Newsmen were herded onto nearby Barbados Island and prevented from going to Grenada. They weren't happy.

The only news link as to what was going on in Grenada came from a medical student who happened to be a ham operator. He reported the invasion to the world from under a table at the medical school campus. Broadcasters, starving for news, began reporting and rebroadcasting his transmissions. The FCC issued cautioning bulletins as to what the media could and could not do on amateur spectrum.

## COMPREHENSIVE REVIEW UNDERTAKEN

In light of the uncertainty about broadcast use of amateur radio, the FCC adopted a Notice of Proposed Rulemaking on July 12, 1984. The Notice set forth specific proposals for eliminating restrictions and procedures with respect to rebroadcast activity and for rewriting portions of the amateur rules to clarify the Commission's policy with respect to use of amateur facilities for broadcast purposes.

Up until this point, broadcasters had to obtain permission from the station licensee and the FCC before personal radio transmissions could be rebroadcast in the media. Amateurs weren't allowed to engage in any form of broadcasting to the public, but could give rebroadcast consent provided that the trans-

missions did not contain any reference to the airing. Broadcasters were precluded from interacting with ham operators since §Part 97.114 prohibits use of an amateur station for third party communications involving compensation or business.

## JUST WHAT ARE 'THE NEW RULES'?

On June 7, 1985, the FCC finally released their ruling entitled "Rebroadcasts of Transmissions of Non-Broadcast Radio Stations." It was printed in the June 18th Federal Register (...Pages 25241 to 25247 if you want to read it at your public library.) We reported on it in our July 1st issue.

It set forth the following rule changes:

(1.) - The FCC eliminated the prohibition on rebroadcasts of Personal Radio Service communications stating that they "were sensitive to the First Amendment rights of broadcasters and do not wish to impose any regulation that might necessarily restrict broadcasters access to information sources."

(2.) - The FCC was concerned in 1984 that their amateur rules "might be insufficiently specific with respect to (their) intent that they prohibit all activities involving use of amateur stations for broadcast purposes." They proposed to "resolve this by rewriting parts of the amateur rules and including a specific prohibition on the use of amateur stations for broadcast news gathering and other program production purposes."

Two powerful broadcast organizations, the National Association of Broadcasters (NAB) and the Radio-Television News Directors Association (RTNDA) supported bona fide news event gathering by amateur radio when other telecommunications facilities were not available or inadequate. NAB membership includes more than 4,500 commercial radio stations, 800 television stations and the major commercial broadcast networks. RTNDA is a professional journalism organization of more than 2,000 news directors and others involved in supervising, reporting and editing news programs. Both groups are very well funded.

The ARRL opposed their position saying



# W5YI REPORT.....

Page #3

October 15, 1985

it was overly broad and inconsistent with the noncommercial nature of the amateur radio service.

## THE NEW AMATEUR RULES - PART 97.113

The final FCC amateur rules clearly prohibited use of amateur stations for broadcast news gathering or production as originally proposed. §Part 97.113 was rewritten to make this crystal clear. There were no exceptions! The FCC said in new §Part 97.113 that...

(a.) An amateur station shall not be used to engage in any form of broadcasting, that is, the dissemination of radio communications intended to be received by the public directly or by intermediary relay stations...

(b.) An amateur station may not be used for any activity related to program production or news gathering for broadcast purposes.

(c.) An amateur station shall not retransmit programs or signals emanating from any class of radio station other than amateur except for emergency communications which were redefined by the Commission to insure against any misinterpretation.

The redefined definition of "Emergency Communication" (Part 97.3(w)) is "A non-directed request for help or a distress signal directly relating to the immediate safety of human life or the immediate protection of property." The key word is non-directed. It was a very narrow and clear definition.

## PARAGRAPH 22 OF THE FCC ORDER....

The FCC acknowledged, however, that broadcasters had sought a much broader application of amateur radio to broadcast purposes. The RTNDA and the NAB wanted to use amateur radio circuits when commercial facilities were not available. Ham operators ...and communications ...are always readily available. There are few remote locations where a ham station is not already set up and operational. Broadcasters wanted to use them.

The FCC decided not to provide for any "unnecessary exceptions in the amateur rules

which could needlessly encourage unauthorized broadcast related amateur transmissions." At least that is what they said in one portion of the Order..

## THE BROADCAST LOOPHOLE EMERGES....

In another, the FCC said RTNDA's needs could be accommodated by a "rule of reason." While never appearing in the written amateur rules, the Commission wrote in paragraph 22 of their Order that...

"Conveying news information directly relating to an unforeseen event which involves the safety of human life or the immediate protection of property falls within this rule of reason, if it cannot be transmitted by any means other than amateur radio because of the remote location of the originating transmission or because normal communications have been disrupted by earthquake, fire, flood, tornado, hurricane, severe storm or national emergency."

The Commission further added that "We believe acceptable uses of amateur radio in emergencies are governed by traditional common sense interpretations..."

## RTNDA AND NETWORKS INTERPRET RULES

When broadcasters received the new rules last June, they took particular note of paragraph 22. Here was a loop-hole in the ruling. The RTNDA's legal counsel, Larry Scharff of the Washington law firm of Pierson, Ball & Dowd, put out a "Special Report" in August that was very widely distributed. Every newsroom across the country got it.

In it, Scharff said that the FCC's Order was complex when applied to their request for increased journalistic use of ham radio during an emergency. The RTNDA published paragraph 22 of the Order in their Special Report. While acknowledging that the FCC generally reinforced its rules prohibiting ham radio stations being used for broadcast purposes - the RTNDA opinion to news broadcasters said the paragraph...

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The ARRL opposed their position saying

"I am a currently licensed Extra Class amateur radio operator and wish to be a volunteer examiner. I have never had my station or operator license revoked or suspended. I do not own a significant interest in nor am an employee of any company or entity engaged in making, preparing or distributing amateur radio equipment or license preparation materials. My age is at least 18 years old."

WOULD YOU LIKE TO BECOME A VOLUNTEER EXAMINER? Under "The W5YI Report" Program? If so, please send a copy of your Extra Class license, this signed statement, and a SASE to: W5YI-VEC; P.O. Box #10101; Dallas, Texas 75207. A certificate (optional) is also available for \$1.00. Details and accreditation materials will be sent to you within a two week period.

and welfare could weaken the traditional police power exercised by the state and unduly interfere..."

The FCC said that when considering preemption, two constitutional provisions must be dealt with...

(1.) The Tenth Amendment provides that any powers which the constitution does not delegate to the U.S. or does not prohibit the states from exercising are reserved to the states. These are the police powers of the states.

(2.) The Supremacy Clause provides that the constitution and the laws of the U.S. shall supersede any state law to the contrary.

"The cities, counties, local communities and housing associations see an obligation to all of their citizens and try to address their concerns... through regulations, ordinances or covenants oriented toward the health, safety and general welfare of those they regulate," the FCC said in the Order. "At the opposite pole are the individual amateur operators and their support groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications."

The Commission said that "we believe it is appropriate to strike a balance between the federal interest in promoting amateur operations and the legitimate interests of local governments in regulating local zoning matters. The cornerstone on which we will predicate our decision is that reasonable accommodation may be made between the two sides."

## THE FCC RULING ON AMATEUR ANTENNAS

- ...there is a strong federal interest in promoting amateur communications.
- ...the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on at times of national or local emergencies.
- ...the amateur radio service provides the opportunity for individual operators to further international good will.
- ...amateur station communications are only as effective as the antennas employed... antenna height restrictions directly affect the

effectiveness of amateur communications.

(e.) "...Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted."

(f.) "...local regulations which involve placement, screening, or height of antennas based on health, safety or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and... represent the minimum practicable regulation to accomplish the local authority's legitimate purpose."

## FCC PROCEEDS AGAINST HAM JAMMER....

The FCC has begun a license revocation proceeding against J. Fred Riley, WA8AJN, of Kenova, WV. Riley, an Extra Class amateur, is charged with "malicious interference" or jamming the amateur radio communications of others. Also alleged were violations of the amateur station identification rules.

The Show Cause Order issued on September 23rd alleges that on May 2, July 5 and July 14, 1985, Riley deliberately interfered with other amateur operators by transmitting directly over ongoing communications on 3898 kHz and 3895 kHz. He was monitored and recorded by FCC enforcement personnel.

Riley has been ordered to Show Cause why his Amateur station license should not be revoked and his Amateur operator license suspended based on these rule violations. He has 30 days to submit a request for a hearing or a written statement concerning the matter.

On March 4th, the Commission issued a Public Notice (see 3/15 Report) alerting the amateur community of an enforcement crackdown centered on amateurs that normally use the 3895 kHz frequency. At that time the FCC listed 22 cities (including two in West Virginia) that would be under surveillance.

A stern warning was issued that "Those responsible for illegal... amateur transmissions should voluntarily stop their violative activities. Failure to do so will result in fines, license revocations or criminal actions." Apparently Riley never got the word.



dates, to examine more people than they can plan for or accommodate, to promptly return to a locality for retesting or in any other way to alter their present procedures. Their only obligations are to maximize the number of different examinations in use and to change frequently the questions used."

(6.) - The FCC sought to require public announcement only for examination sessions intended for five or more candidates. This would have excluded public announcement of certain exams for handicapped persons or examinations given to a candidate at home for medical reasons.

The ARRL (as well as the majority of commenters) opposed the proposal saying that no examination should be private. "It said that unannounced 'back room' exams promote abuse or the perception of possible abuse." The ARRL position is that exams should be in the public eye to insure integrity.

Although a team of three examiners "is calculated to preclude fraudulent examinations... in view of the comments, we will continue to require that public announcement of all examinations be given."

The public announcement should make it clear that the number of candidates at any one exam session may be limited and the public should be alerted to any such limitation.

(7.) - Effective November 8, 1985, new §Part 97.26(a) reads: "Each examination for an amateur operator license must be administered at a place and time chosen by the examiner(s). The number of candidates at any examination session may be limited. Public announcement must be made before all examinations for elements 1(B), 1(C), 3, 4(A) or 4(B)." §Part 97.26(h) which required applicants waiting 30 days before retesting is removed. (Action by FCC Report & Order, 9/16/85.)

## THE FCC OPINION & ORDER ON PRB-1....

The eleven page FCC Order on "Federal Preemption of State and Local Regulations pertaining to Amateur Radio Facilities", PRB-1, also arrived since our last newsletter.

Again, it was pretty much as we reported from the press release which preceded it.

Over 1600 comments were filed on PRB-1 making it one of the most popular issues among amateurs. Only the "no-code" matter received more in recent time.

"Restrictive Covenants" contained in the deeds for their homes or in apartment leases are not generally a matter of concern to the FCC since they are contractual agreements between private parties. The FCC did, however, devote considerable space in the Order to discussing them.

Amateurs said that such restrictions limit the places that they can reside if they want to pursue their hobby of amateur radio. Some felt that they impinge on First Amendment rights of free speech.

Housing subdivisions and condominium or homeowner's associations believe that amateur radio installations constitute safety hazards, detract from the aesthetic and tasteful appearance of the complex, and cause interference to home electronic equipment. Restrictions and limitations are placed in their deeds, leases or by-laws to counteract this perception.

The FCC said "Purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere."

## THE COMMENTS ON PRB-1....

The comments on the matter generally supported that the FCC issue a statement declaring that amateur radio antennas and their support structures lie in the federal domain. The Department of Defense (overseer of MARS), the American Red Cross and Civil Defense (who utilize amateurs in times of disaster) all favored the declaratory ruling.

Municipalities and their groups (National Association of Counties, American Planning Association, National League of Cities, etc.), however, generally opposed the issuance of an antenna preemption ruling citing "...Federal intrusion into local concerns of health, safety

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This is, of course, allowed without limitation. The W5YI Report appears on many computer bulletin boards and in club newsletters. We do not get any income from this and would appreciate it if you would publish our small classified ad (see margin between pages 4 & 7) on license preparation materials. Thanks!

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He was right! While paragraph 22 used the word "emergency", it also related it to "conveying news information directly related to an unforeseen event..."

(2.) - ...the FCC is not expected to interpret the "safety of human life... the immediate protection of property... or the newly adopted 'emergency' rule" requirements 'narrowly.'

(3.) - "...the FCC condones 'common sense interpretations' of ham radio use in emergencies."

(4.) - "...it is the RTNDA's legal opinion 'that paragraph 22 permits cooperation between broadcasters and ham operators in such instances as immediate post-hurricane or immediate post-plane crash coverage, even when there is no immediate threat to life of property...'"

(5.) - News organizations were advised to have their attorneys review the new rules "to determine the extent to which ham facilities may be used for broadcast purposes."

## ARRL ASKS FCC TO RECONSIDER....

While it never made it to the rules, the League also noted paragraph 22. They filed a Petition for Reconsideration on the emergency communication definition and criticized the "rule of reason" broadcaster/ham operator cooperation approach taken by the Commission. Another amateur, David B. Popkin, W2CC, of New Jersey also took issue with the ruling.

Both said there were shortcomings in the Order. The League said that clear parameters for amateur operation during emergencies should be stated in the amateur rules. In responding to the two Petitions for Reconsideration, the NAB and RNTDA jointly agreed that a clarification of paragraph 22 was needed.

"NAB and RNTDA believe that in paragraph 22 of the Report and Order, the Com-

mission essentially has adopted our recommendation that amateur radio operators be allowed to cooperate voluntarily with broadcasters for news gathering and reporting purposes when information about extraordinary and important news events cannot be transmitted by other means of communication," their August 26th comments on the Petitions for Reconsideration read.

"The paragraph specifically states that the new rules permit amateur radio cooperation with journalists in certain situations and refers approvingly to examples offered by the RTNDA in its comments in this proceeding, including the use of amateur radio during 'severe weather and seismic conditions, ...tornadoes after they have struck and severed all other communications systems, ...rapidly moving forest fires ...(and) an airline crash in a remote area.' These definitions clearly go beyond the definition of emergency communication adopted in the Report and Order ...'a non-directed request for help or a distress signal...'"

## NAB, RTNDA REQUESTS CLARIFICATION...

The NAB and RTNDA again in August asked that the FCC "adopt, as an exception to the prohibition against business communications and broadcast related activities of amateur radio, a provision that would allow voluntary cooperation between an amateur operator and a broadcast journalist for news gathering and reporting when information concerning extraordinary and important news events cannot be transmitted by other means of communications."

The NAB and RTNDA said that "At minimum, the Commission should add a footnote to §Part 97.3(w) stating:

For purposes of amateur radio operators cooperating with the news media in certain emergency situations, a "rule of reason" will apply."

They also added that without further clarification "...that aids the free flow of information to the public, the Commission's new rules raise serious due process and First Amendment issues." The NAB and RTNDA

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**FCC-Novice Element 2 Test \$1.00 + 50¢ postage**  
**FCC-Novice Element 3 Test \$1.00 + 50¢ postage**  
 even though a VEC in all regions  
 the W5VI Report



again "urged the Commission to adopt rule changes that would permit amateur radio operators to cooperate with journalists for news gathering and reporting purposes when information concerning extraordinary and important events cannot be transmitted by other means of communication."

## MEXICO CITY LEVELED BY EARTHQUAKE

All of this... the legal interpretations by the networks and their industry association counsels... the Petitions for Reconsideration... the Comments on them... the RTNDA "Special Report"... was going on between July 1st and the end of August.

On the morning of September 19th, Mexico City was devastated by a terrible earthquake that killed over 5,000... and knocked out most, but not all, long distance communications. Satellite circuits were still available and used to transmit video and telephone communications out of the city.

Freshly armed with all of the high priced legal opinions, reports, and interpretations of what the FCC said in their June Report and Order could be done on the ham bands during an "emergency", the media took matters into their own hands. They established amateur radio logistical and news gathering links which they maintained were legal and specifically provided for. They had been given an inch... they took a mile. In effect, broadcasters "tossed the ball" into the FCC's "court" and have now forced a confrontation.

One thing is known! The Commission never intended to provide for any amateur radio circuits being used for news media support, period! The FCC went to great pains to preclude it. Still, their handling of paragraph 22 remains a mystery.

We have talked to officials in the FCC's Private Radio Bureau and they are as surprised as anyone over the extent that amateur radio was used by the broadcaster. "We thought we put an end to all of that (amateur spectrum use by broadcasters)," I was told.

We will have to wait and see how they deal with it. This story is undoubtedly not over!

## AMATEUR LICENSE REVOKED BY FCC....

The FCC Review Board has affirmed the revocation of the Advanced Class license of Amateur, James W. Smith, W6VCE of El Cajon, California. Smith had been accused of willful and malicious interference to other amateur communications, failure to identify his amateur station, broadcasting, and transmissions of music.

The San Diego amateur community had a rash of amateur radio harrassment, intimidation and jamming incidents during 1983 and 1984. It got so serious that a letter was jointly written to FCC Chairman Mark Fowler by four local Congressmen calling the "deliberate and malicious abuses" to their attention. (See W5YI REPORT, May 1, 1984.)

Administrative Law Judge Fitzpatrick concluded on September 19, 1985, that Smith violated each of the cited rules and that these infractions required the revocation of his amateur station license and suspension of his operator license.

Specifically, the findings established that on February 19, 1984, Smith, without identifying his station, transmitting country and western and easy-listening music over his amateur radio station, therefore willfully and maliciously causing interference to other amateur operators.

Smith filed an appeal and argued that he lacked the technical equipment necessary to access the repeater frequency on which the music was heard. The FCC responded by saying that they had "substantial evidence" that Smith was indeed the source of the interference.

Using "sophisticated direction finding equipment," William H. Grigsby, Engineer-in-Charge of the FCC San Diego Office traced the source of the music interference to Smith's residence several times on the evening of February 19th.

Smith also charged that "Grigsby's testimony was unreliable because the engineer was prejudiced against him." Based on Grigsby's extensive enforcement experience, the FCC



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again "urged the Commission to adopt rule changes that would permit amateur radio operators to cooperate with journalists for news gathering and reporting purposes when information concerning extraordinary and important events cannot be transmitted by other means of communication."

## MEXICO CITY LEVELED BY EARTHQUAKE

All of this... the legal interpretations by the networks and their industry association counsels... the Petitions for Reconsideration... the Comments on them... the RTNDA "Special Report"... was going on between July 1st and the end of August.

On the morning of September 19th, Mexico City was devastated by a terrible earthquake that killed over 5,000... and knocked out most, but not all, long distance communications. Satellite circuits were still available and used to transmit video and telephone communications out of the city.

Freshly armed with all of the high priced legal opinions, reports, and interpretations of what the FCC said in their June Report and Order could be done on the ham bands during an "emergency", the media took matters into their own hands. They established amateur radio logistical and news gathering links which they maintained were legal and specifically provided for. They had been given an inch... they took a mile. In effect, broadcasters "tossed the ball" into the FCC's "court" and have now forced a confrontation.

One thing is known! The Commission never intended to provide for any amateur radio circuits being used for news media support, period! The FCC went to great pains to preclude it. Still, their handling of paragraph 22 remains a mystery.

We have talked to officials in the FCC's Private Radio Bureau and they are as surprised as anyone over the extent that amateur radio was used by the broadcaster. "We thought we put an end to all of that (amateur spectrum use by broadcasters)," I was told.

We will have to wait and see how they deal with it. This story is undoubtedly not over!

## AMATEUR LICENSE REVOKED BY FCC....

The FCC Review Board has affirmed the revocation of the Advanced Class license of Amateur, James W. Smith, W6VCE of El Cajon, California. Smith had been accused of willful and malicious interference to other amateur communications, failure to identify his amateur station, broadcasting, and transmissions of music.

The San Diego amateur community had a rash of amateur radio harrassment, intimidation and jamming incidents during 1983 and 1984. It got so serious that a letter was jointly written to FCC Chairman Mark Fowler by four local Congressmen calling the "deliberate and malicious abuses" to their attention. (See W5YI REPORT, May 1, 1984.)

Administrative Law Judge Fitzpatrick concluded on September 19, 1985, that Smith violated each of the cited rules and that these infractions required the revocation of his amateur station license and suspension of his operator license.

Specifically, the findings established that on February 19, 1984, Smith, without identifying his station, transmitting country and western and easy-listening music over his amateur radio station, therefore willfully and maliciously causing interference to other amateur operators.

Smith filed an appeal and argued that he lacked the technical equipment necessary to access the repeater frequency on which the music was heard. The FCC responded by saying that they had "substantial evidence" that Smith was indeed the source of the interference.

Using "sophisticated direction finding equipment," William H. Grigsby, Engineer-in-Charge of the FCC San Diego Office traced the source of the music interference to Smith's residence several times on the evening of February 19th.

Smith also charged that "Grigsby's testimony was unreliable because the engineer was prejudiced against him." Based on Grigsby's extensive enforcement experience, the FCC



Judge rejected this allegation.

The FCC Review Board agreed that Smith's objections were "based on hypothetical speculation and surmise, rather than evidence" and affirmed that license revocation was in order.

Smith has until October 19th to petition for reconsideration or review, otherwise the revocation becomes effective October 29th.  
Action by: FCC Review Board, Sept. 19, 1985

## NEWS GATHERING ON 434-MHz - PRB-2

Albuquerque amateur, Robert A. Scupp, WB5YYX, has filed a "Motion to Deny and Terminate Proceedings" on PRB-2 which concerns itself with using a UHF amateur frequency for news gathering.

Lee Shoblom, President of London Bridge Broadcasting, Inc., filed a request with the Commission seeking permission to use amateur frequency 434-MHz for news gathering for broadcast purposes on his low power television (LPTV) station.

Scupp reminds the Commission that amateur stations are prohibited from participating in news gathering or production and that §Part 97.1 defines one of the purposes of the Amateur Radio Service "...as a voluntary non-commercial communication service..."

He further quotes §Part 97.3 which prohibits "...any transmission or communication (which) facilitate(s) the regular business or commercial affairs of any party" and defines amateur communications as "...Noncommercial radio communication by or among amateur radio stations solely with a personal aim and without pecuniary or business interest."

Scupp maintains that activity as Shoblom advocates would "promote the moral decay of the Amateur Radio Service" with amateurs being encouraged to violate additional rules.

He also calls to the attention of the FCC that the ITU Region 2 430-440 MHz allocation does not provide for business communications. Scupp says that the FCC "has no

legal authority" to grant approval news gathering or production in the spectrum specifically requested by Mr. Shoblom.  
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## EUROPEAN HAM-IN-SPACE MISSION....

The next "ham-in-space" mission will be an all European one. Space shuttle 61-A is due for lift-off next week... October 16th. NASA is providing the hardware (Shuttle Columbia) and launch.

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The astronauts will be using a German designed 10 watt Bosch/Germany VHF/UHF transceiver. (It radiates one watt when in beacon operation.) Modulation will be FM. Frequency range of transmitter: 144 to 146 MHz. They will receive between 430 and 440 MHz. The transceiver has a built in micro-cassette recorder. Operation will be cross band - 2 meters & 70 cm.

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# W5YI REPORT.....

Page #7

October 15, 1985

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definition to include transmitting news information during a disaster when normal channels have been disrupted."

He was right! While paragraph 22 used the word "emergency", it also related it to "conveying news information directly related to an unforeseen event..."

(2.) - "...the FCC is not expected to interpret the "safety of human life... the immediate protection of property... or the newly adopted 'emergency' rule" requirements 'narrowly.'

(3.) - "...the FCC condones 'common sense interpretations' of ham radio use in emergencies."

(4.) - "...it is the RTNDA's legal opinion 'that paragraph 22 permits cooperation between broadcasters and ham operators in such instances as immediate post-hurricane or immediate post-plane crash coverage, even when there is no immediate threat to life of property...'"

(5.) - News organizations were advised to have their attorneys review the new rules "to determine the extent to which ham facilities may be used for broadcast purposes."

## ARRL ASKS FCC TO RECONSIDER....

While it never made it to the rules, the League also noted paragraph 22. They filed a Petition for Reconsideration on the emergency communication definition and criticized the "rule of reason" broadcaster/ham operator cooperation approach taken by the Commission. Another amateur, David B. Popkin, W2CC, of New Jersey also took issue with the ruling.

Both said there were shortcomings in the Order. The League said that clear parameters for amateur operation during emergencies should be stated in the amateur rules. In responding to the two Petitions for Reconsideration, the NAB and RTNDA jointly agreed that a clarification of paragraph 22 was needed.

"NAB and RTNDA believe that in paragraph 22 of the Report and Order, the Com-

mission essentially has adopted our recommendation that amateur radio operators be allowed to cooperate voluntarily with broadcasters for news gathering and reporting purposes when information about extraordinary and important news events cannot be transmitted by other means of communication," their August 26th comments on the Petitions for Reconsideration read.

"The paragraph specifically states that the new rules permit amateur radio cooperation with journalists in certain situations and refers approvingly to examples offered by the RTNDA in its comments in this proceeding, including the use of amateur radio during 'severe weather and seismic conditions, ...tornadoes after they have struck and severed all other communications systems, ...rapidly moving forest fires ...(and) an airline crash in a remote area.' These definitions clearly go beyond the definition of emergency communication adopted in the Report and Order ...'a non-directed request for help or a distress signal...'"

## NAB, RTNDA REQUESTS CLARIFICATION....

The NAB and RTNDA again in August asked that the FCC "adopt, as an exception to the prohibition against business communications and broadcast related activities of amateur radio, a provision that would allow voluntary cooperation between an amateur operator and a broadcast journalist for news gathering and reporting when information concerning extraordinary and important news events cannot be transmitted by other means of communications."

The NAB and RTNDA said that "At minimum, the Commission should add a footnote to §Part 97.3(w) stating:

For purposes of amateur radio operators cooperating with the news media in certain emergency situations, a "rule of reason" will apply."

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The ARRL (as well as the majority of commenters) opposed the proposal saying that no examination should be private. "It said that unannounced 'back room' exams promote abuse or the perception of possible abuse." The ARRL position is that exam should be in the public eye to insure integrity.

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(Action by FCC Report & Order, 9/16/85.)

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"Restrictive Covenants" contained in the deeds for their homes or in apartment leases are not generally a matter of concern to the FCC since they are contractual agreements between private parties. The FCC did, however, devote considerable space in the Order to discussing them.

Amateurs said that such restrictions limit the places that they can reside if they want to pursue their hobby of amateur radio. Some felt that they impinge on First Amendment rights of free speech.

Housing subdivisions and condominium or homeowner's associations believe that amateur radio installations constitute safety hazards, detract from the aesthetic and tasteful appearance of the complex, and cause interference to home electronic equipment. Restrictions and limitations are placed in their deeds, leases or by-laws to counteract this perception.

The FCC said "Purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere."

## THE COMMENTS ON PRB-1....

The comments on the matter generally supported that the FCC issue a statement declaring that amateur radio antennas and their support structures lie in the federal domain. The Department of Defense (overseer of MARS), the American Red Cross and Civil Defense (who utilize amateurs in times of disaster) all favored the declaratory ruling.

Municipalities and their groups (National Association of Counties, American Planning Association, National League of Cities, etc.), however, generally opposed the issuance of an antenna preemption ruling citing "...Federal intrusion into local concerns of health, safety



A stern warning was issued that "Those responsible for illegal... amateur transmissions should voluntarily stop their violative activities. Failure to do so will result in fines, license revocations or criminal actions." Apparently Riley never got the word.



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WOULD YOU DO US A FAVOR?

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it was overly broad and inconsistent with the noncommercial nature of the amateur radio service.

## THE NEW AMATEUR RULES - PART 97.113

The final FCC amateur rules clearly prohibited use of amateur stations for broadcast news gathering or production as originally proposed. §Part 97.113 was rewritten to make this crystal clear. There were no exceptions! The FCC said in new §Part 97.113 that...

(a.) An amateur station shall not be used to engage in any form of broadcasting, that is, the dissemination of radio communications intended to be received by the public directly or by intermediary relay stations...

(b.) An amateur station may not be used for any activity related to program production or news gathering for broadcast purposes.

(c.) An amateur station shall not retransmit programs or signals emanating from any class of radio station other than amateur except for emergency communications which were redefined by the Commission to insure against any misinterpretation.

The redefined definition of "Emergency Communication" (Part 97.3(w)) is "A non-directed request for help or a distress signal directly relating to the immediate safety of human life of the immediate protection of property." The key word is non-directed. It was a very narrow and clear definition.

## PARAGRAPH 22 OF THE FCC ORDER....

The FCC acknowledged, however, that broadcasters had sought a much broader application of amateur radio to broadcast purposes. The RTNDA and the NAB wanted to use amateur radio circuits when commercial facilities were not available. Ham operators ...and communications ...are always readily available. There are few remote locations where a ham station is not already set up and operational. Broadcasters wanted to use them.

The FCC decided not to provide for any "unnecessary exceptions in the amateur rules

which could needlessly encourage unauthorized broadcast related amateur transmissions." At least that is what they said in one portion of the Order..

## THE BROADCAST LOOPHOLE EMERGES....

In another, the FCC said RTNDA's needs could be accommodated by a "rule of reason." While never appearing in the written amateur rules, the Commission wrote in paragraph 22 of their Order that...

"Conveying news information directly relating to an unforeseen event which involves the safety of human life or the immediate protection of property falls within this rule of reason, if it cannot be transmitted by any means other than amateur radio because of the remote location of the originating transmission or because normal communications have been disrupted by earthquake, fire, flood, tornado, hurricane, severe storm or national emergency."

The Commission further added that "We believe acceptable uses of amateur radio in emergencies are governed by traditional common sense interpretations..."

## RTNDA AND NETWORKS INTERPRET RULES

When broadcasters received the new rules last June, they took particular note of paragraph 22. Here was a loop-hole in the ruling. The RTNDA's legal counsel, Larry Scharff of the Washington law firm of Pierson, Ball & Dowd, put out a "Special Report" in August that was very widely distributed. Every newsroom across the country got it.

In it, Scharff said that the FCC's Order was complex when applied to their request for increased journalistic use of ham radio during an emergency. The RTNDA published paragraph 22 of the Order in their Special Report. While acknowledging that the FCC generally reinforced its rules prohibiting ham radio stations being used for broadcast purposes - the RTNDA opinion to news broadcasters said the paragraph...

(1.) - "...went beyond its new non-directed 'distress call' emergency communications

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broadcasting to the public - since "business" could legally be conducted there.

In 1982, Congress modified Section 605 of the Communications Act to eliminate the statutory prohibition on the unauthorized interception of amateur and CB radio transmissions. In a sentence, amateur communications were no longer to be considered private. Section 605 was redesignated Section 705 in 1984.

### THE GRENADA INVASION NEWS BLACKOUT

Many questions arose during the United States invasion of Grenada in October of 1983 concerning broadcast use of amateur radio. The media was prevented from covering the military action by a Department of Defense news blackout. Newsmen were herded onto nearby Barbados Island and prevented from going to Grenada. They weren't happy.

The only news link as to what was going on in Grenada came from a medical student who happened to be a ham operator. He reported the invasion to the world from under a table at the medical school campus. Broadcasters, starving for news, began reporting and rebroadcasting his transmissions. The FCC issued cautioning bulletins as to what the media could and could not do on amateur spectrum.

### COMPREHENSIVE REVIEW UNDERTAKEN

In light of the uncertainty about broadcast use of amateur radio, the FCC adopted a Notice of Proposed Rulemaking on July 12, 1984. The Notice set forth specific proposals for eliminating restrictions and procedures with respect to rebroadcast activity and for rewriting portions of the amateur rules to clarify the Commission's policy with respect to use of amateur facilities for broadcast purposes.

Up until this point, broadcasters had to obtain permission from the station licensee and the FCC before personal radio transmissions could be rebroadcast in the media. Amateurs weren't allowed to engage in any form of broadcasting to the public, but could give rebroadcast consent provided that the trans-

missions did not contain any reference to the airing. Broadcasters were precluded from interacting with ham operators since §Part 97.114 prohibits use of an amateur station for third party communications involving compensation or business.

### JUST WHAT ARE 'THE NEW RULES'?

On June 7, 1985, the FCC finally released their ruling entitled "Rebroadcasts of Transmissions of Non-Broadcast Radio Stations." It was printed in the June 18th Federal Register (...Pages 25241 to 25247 if you want to read it at your public library.) We reported on it in our July 1st issue.

### It set forth the following rule changes:

(1.) - The FCC eliminated the prohibition on rebroadcasts of Personal Radio Service communications stating that they "were sensitive to the First Amendment rights of broadcasters and do not wish to impose any regulation that might necessarily restrict broadcasters access to information sources."

(2.) - The FCC was concerned in 1984 that their amateur rules "might be insufficiently specific with respect to (their) intent that they prohibit all activities involving use of amateur stations for broadcast purposes." They proposed to "resolve this by rewriting parts of the amateur rules and including a specific prohibition on the use of amateur stations for broadcast news gathering and other program production purposes."

Two powerful broadcast organizations, the National Association of Broadcasters (NAB) and the Radio-Television News Directors Association (RTNDA) supported bona fide news event gathering by amateur radio when other telecommunications facilities were not available or inadequate. NAB membership includes more than 4,500 commercial radio stations, 800 television stations and the major commercial broadcast networks. RTNDA is a professional journalism organization of more than 2,000 news directors and others involved in supervising, reporting and editing news programs. Both groups are very well funded.

The ARRL opposed their position saying

"I am a currently licensed Extra Class amateur radio operator and wish to be a volunteer examiner. I have never had my station or operator license revoked or suspended. I do not own a significant interest in nor am an employee of any company or entity engaged in making, preparing or distributing amateur radio equipment or license preparation materials. My age is at least 18 years old."

### WOULD YOU LIKE TO BECOME A VOLUNTEER EXAMINER?

Under "The W5YI Report" Program? If so, please send a copy of your Extra Class license, this signed statement, and a SASE to: W5YI-VEC; P.O. Box #10101; Dallas, Texas 75207. A certificate (optional) is also available for \$1.00. Details and accreditation materials will be sent to you within a two week period.

and welfare could weaken the traditional police power exercised by the state and unduly interfere..."

The FCC said that when considering preemption, two constitutional provisions must be dealt with...

(1.) The Tenth Amendment provides that any powers which the constitution does not delegate to the U.S. or does not prohibit the states from exercising are reserved to the states. These are the police powers of the states.

(2.) The Supremacy Clause provides that the constitution and the laws of the U.S. shall supersede any state law to the contrary.

"The cities, counties, local communities and housing associations see an obligation to all of their citizens and try to address their concerns... through regulations, ordinances or covenants oriented toward the health, safety and general welfare of those they regulate," the FCC said in the Order. "At the opposite pole are the individual amateur operators and their support groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications."

The Commission said that "we believe it is appropriate to strike a balance between the federal interest in promoting amateur operations and the legitimate interests of local governments in regulating local zoning matters. The cornerstone on which we will predicate our decision is that reasonable accommodation may be made between the two sides."

### THE FCC RULING ON AMATEUR ANTENNAS

- ...there is a strong federal interest in promoting amateur communications.
- ...the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on at times of national or local emergencies.
- ...the amateur radio service provides the opportunity for individual operators to further international good will.
- ...amateur station communications are only as effective as the antennas employed... antenna height restrictions directly affect the

effectiveness of amateur communications.

(e.) ...Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted."

(f.) ...local regulations which involve placement, screening, or height of antennas based on health, safety or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and... represent the minimum practicable regulation to accomplish the local authority's legitimate purpose.

### FCC PROCEEDS AGAINST HAM JAMMER....

The FCC has begun a license revocation proceeding against J. Fred Riley, WA8AJN, of Kenova, WV. Riley, an Extra Class amateur, is charged with "malicious interference" or jamming the amateur radio communications of others. Also alleged were violations of the amateur station identification rules.

The Show Cause Order issued on September 23rd alleges that on May 2, July 5 and July 14, 1985, Riley deliberately interfered with other amateur operators by transmitting directly over ongoing communications on 3898 kHz and 3895 kHz. He was monitored and recorded by FCC enforcement personnel.

Riley has been ordered to Show Cause why his Amateur station license should not be revoked and his Amateur operator license suspended based on these rule violations. He has 30 days to submit a request for a hearing or a written statement concerning the matter.

On March 4th, the Commission issued a Public Notice (see 3/15 Report) alerting the amateur community of an enforcement crackdown centered on amateurs that normally use the 3895 kHz frequency. At that time the FCC listed 22 cities (including two in West Virginia) that would be under surveillance.

A stern warning was issued that "Those responsible for illegal... amateur transmissions should voluntarily stop their violative activities. Failure to do so will result in fines, license revocations or criminal actions." Apparently Riley never got the word.



## U.S. CITIZENS GET JAPANESE LICENSES....

The first Japanese reciprocal amateur radio license was issued to an American on September 30th. Joseph P. Speroni, AH0A, was issued the call 7J1AAA effective October 1, 1985, for a one year period. The Japanese MPT (Ministry of Post and Telecommunications) changed the alien reciprocal license prefix block from 8N1 to 7J1 at the last minute. As of this writing, a total of six licenses (through 7J1AAF) have now been issued.

Speroni had to pay an equivalent of \$59.09 for his mobile only 50 watt Japanese ham license which allows him to operate on specific frequencies - not bands - using CW, SSB and FM emissions only. Only one frequency per band is authorized. Joe can renew the ticket at the end of one year for 3,000 yen - \$13.64 at the current rate of exchange.

Strangely, the FCC's Private Radio Bureau has yet to publicly acknowledge that reciprocity exists between United States and Japan. It has been confirmed by the State Department, however.

I spoke to Speroni by telephone in Tokyo last week. He says that the 7J1 license issuance went smoothly although he is concerned about the workload on the JARL who will prepare the government paperwork.

Under reciprocal arrangements, Japanese no-code amateurs will be able to operate in the United States above 30 MHz without Morse code proficiency. A similar circumstance also exists for the reciprocally licensed no-code amateurs of England, Germany and Australia.

An interesting side note is that 7J1AAD was issued to Andy Clark, WA5PRF... the son of Vic Clark, W4KFC, the late ARRL president. Clark, who reads and writes Japanese fluently and has a Japanese wife, has been living in Japan since he left the military.

The following are the highlights of the diplomatic note that were exchanged between the U.S. Embassy and the Japanese foreign minister in August authorizing reciprocity:

"(1.) Japanese amateurs operating in the U.S. on a reciprocal basis must operate their stations in accordance with the regulations of the United States.

(2.) A national of Japan who is licensed by his government as an amateur radio operator shall before being permitted to establish and operate his station... as provided for in paragraph 1... obtain from the appropriate administrative agency in the United States of America an authorization for that purpose.

(3.) The appropriate administrative agency of the United States may issue an authorization to a national of Japan, as prescribed in paragraph 2, under such conditions and terms as it may prescribe and may cancel the authorization at its convenience at any time according to the related laws and regulations in force in the United States of America.

(4.) The reciprocal granting of the authorization will commence 30 days from the date of the present note. If the government of the United States wishes to terminate the foregoing measures, it will give 6 months notice in writing to the government of Japan."

Even though the FCC's Private Radio Bureau has not formally announced amateur radio reciprocity with Japan, there are some sixteen Japanese alien licenses now pending in at the FCC's Gettysburg, Pennsylvania, licensing facility. The FCC's Treaty Branch advises that they have been giving Gettysburg guidance on how to proceed with them.

I also inquired about a rumor that I had heard concerning U.S. reciprocity with Mexico. Supposedly American amateurs would be allowed to operate in Mexico to assist with communications during the earthquake crisis. One report even had it that American amateurs were already there operating in Mexico.

Frank Williams, Chief of the FCC's Treaty Branch (and N4FK) told me that although he had also heard that rumored, there has been no official governmental exchange permitting reciprocity in Mexico. Another report had it that the Mexican government has refused the assistance of the U.S. amateurs.